IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

WP(C).No. 3634 of 2007(G)

OS.122/1992 of MUNSIFF COURT, CHANGANACHERRY
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PETITIONER:

M.K. CHELLAPPAN, AGED 74 YEARS,
S/O.K.M. KRISHNAN, MUTTATHUPARAMBU VEEDU,
CHETHIPUZHA VILLAGE, VALIYAKULAM,
KURISUMMOODU P.O., CHANGANACHERRY - 4,
KOTTAYAM DISTRICT.

BY ADV. SRI.P.K.JOSE
SMT.TESSY JOSE

RESPONDENTS:
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1. JOSEPH SCARIA, MADAKKATTAYA,
CHIRAKKUZHIYIL PAZHAYACHIRA,
THRIKKODITHANAM P.O., CHANGANACHERRY.

2. A.K. BAPPUJI SREERENGATH VEEDU,
MADAPPALLY VILLAGE, P.O.CHENGANACHERRY,
KOTTAYAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 3634 OF 2007

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Dated this the 2nd day of February, 2007.

J U D G M E N T

This writ petition is filed to recall the warrant of arrest made against the first judgment debtor. The decree is one for realisation of an amount of more than Rs.75,000/-. In an enquiry conducted under Order 21, the decree holder alone was examined and the first judgment debtor did not mount to box and therefore the Court below found that the judgment debtor has got sufficient means to pay the amount and that he is neglecting or refusing to pay the amount and ordered issuance of arrest. It is that order which is under challenge here.

The learned young counsel persuasively submits before me that her client was badly bed ridden and was unable to attend the Court. According to her, he has no means and if at all any amount can be paid it can be only after a decision is taken in the partition case between the parties pending before the Court. Considering the contention raised by the learned counsel and in the interest of

justice I am inclined to grant an opportunity to the first judgment debtor to put forward his case but it can be done only on payment of some amount.

Therefore, the writ petition is disposed of directing the writ petitioner to pay or deposit a sum of Rs.15,000/- within one month from today before the trial court for payment towards the decree debt and thereafter he may file his objections and contend for the position regarding the plea of no means. If he does not make any payment within the stipulated time, the benefit given to him shall stand automatically cancelled. Till that amount is paid and the matter is further proceeded with the order of arrest passed by the Court below shall be kept in abeyance.

The writ petition is disposed of accordingly.

M.N. Krishnan, Judge.

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